

§ 438.708

section 1903(m) or section 1932 of the Act, or this subpart. The State must also grant enrollees the right to terminate enrollment without cause, as described in § 438.702(a)(3), and must notify the affected enrollees of their right to terminate enrollment.

(c) *Hearing.* The State may not delay imposition of temporary management to provide a hearing before imposing this sanction.

(d) *Duration of sanction.* The State may not terminate temporary management until it determines that the MCO can ensure that the sanctioned behavior will not recur.

§ 438.708 Termination of an MCO or PCCM contract.

A State has the authority to terminate an MCO or PCCM contract and enroll that entity's enrollees in other MCOs or PCCMs, or provide their Medicaid benefits through other options included in the State plan, if the State determines that the MCO or PCCM has failed to do either of the following:

(a) Carry out the substantive terms of its contract; or

(b) Meet applicable requirements in sections 1932, 1903(m), and 1905(t) of the Act.

§ 438.710 Due process: Notice of sanction and pre-termination hearing.

(a) *Notice of sanction.* Except as provided in § 438.706(c), before imposing any of the intermediate sanctions specified in this subpart, the State must give the affected entity timely written notice that explains the following:

(1) The basis and nature of the sanction.

(2) Any other due process protections that the State elects to provide.

(b) *Pre-termination hearing*—(1) *General rule.* Before terminating an MCO or PCCM contract under § 438.708, the State must provide the entity a pre-termination hearing.

(2) *Procedures.* The State must do the following:

(i) Give the MCO or PCCM written notice of its intent to terminate, the reason for termination, and the time and place of the hearing;

(ii) After the hearing, give the entity written notice of the decision affirming or reversing the proposed termination

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of the contract and, for an affirming decision, the effective date of termination; and

(iii) For an affirming decision, give enrollees of the MCO or PCCM notice of the termination and information, consistent with § 438.10, on their options for receiving Medicaid services following the effective date of termination.

§ 438.722 Disenrollment during termination hearing process.

After a State notifies an MCO or PCCM that it intends to terminate the contract, the State may do the following:

(a) Give the entity's enrollees written notice of the State's intent to terminate the contract.

(b) Allow enrollees to disenroll immediately without cause.

§ 438.724 Notice to CMS.

(a) The State must give the CMS Regional Office written notice whenever it imposes or lifts a sanction for one of the violations listed in § 438.700.

(b) The notice must—

(1) Be given no later than 30 days after the State imposes or lifts a sanction; and

(2) Specify the affected MCO, the kind of sanction, and the reason for the State's decision to impose or lift a sanction.

§ 438.726 State plan requirement.

(a) The State plan must include a plan to monitor for violations that involve the actions and failures to act specified in this part and to implement the provisions of this part.

(b) A contract with an MCO must provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by CMS under section 438.730(e).

§ 438.730 Sanction by CMS: Special rules for MCOs

(a) *Basis for sanction.* (1) A State agency may recommend that CMS impose the denial of payment sanction specified in paragraph (e) of this section on an MCO with a contract under this part if the agency determines that